

Message Text

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FOLLOWING REPEAT STATE 244178 ACTION BERN OTTAWA PARIS BONN TOKYO
LONDON EC BRUSSELS OECD PARIS INFO ANKARA ATHENS BRUSSELS
CANBERRA COPENHAGEN DUBLIN IAEA VIENNA HELSINKI LISBON LUXEMBOURG
MADRID OSLO REYKJAVIK ROME STOCKHOLM THE HAGUE VIENNA 06 NOV

QUOTE

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E.O. 11652:

TAGS: EFIN, OECD

SUBJECT: INVESTMENT/MNE EXERCISE IN OECD EXECUTIVE
COMMITTEE IN SPECIAL SESSION (XCSS)

REF: (A) OECD PARIS 29070-10 NOV 73 (C) CE(74)15-
(B) OECD PARIS 10631-2 MAY 74 OCT. 9, 1974

1. AT ITS NOVEMBER 25-26 MEETING THE OECD EXECUTIVE
COMMITTEE IN SPECIAL SESSION (?) WILL DISCUSS THE
ON-GOING EXERCISE ON INVESTMENT AND ACTIVITIES OF MULTI-
NATIONAL ENTERPRISES (MNE).

2. ACTION POSTS ARE REQUESTED AT EARLY OPPORTUNITY TO
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APPROACH APPROPRIATE OFFICIALS IN THE HOST GOVERNMENT

(INCLUDING HEAD OF DELEGATION TO XCSS WHO WILL PARTICIPATE IN RESTRICTED MEETING ON NOVEMBER 24 OF INFORMAL STEERING GROUP). IN APRIL XCSS HEAD OF DELS WERE: DUPUY (CANADA), BRUNET (FRANCE), STEEG (GERMANY), TSURUMI (JAPAN), THORNTON (U.K.), AND HIJZEN (EC COMMISSION). PLEASE MAKE FOLLOWING POINTS:

A. THE US CONTINUES TO ATTACH CONSIDERABLE IMPORTANCE TO THE INVESTMENT/MNE WORK IN THE OECD. THE

OBJECTIVES OF THIS EXERCISE ARE TO STRENGTHEN INTERNATIONAL COOPERATION THROUGH ACHIVING AGREEMENT ON PRINCIPLES AND CONSULTATION PROCEDURES TO HELP INSURE THAT NATIONAL OBJECTIVES ARE ACHIEVED IN WAYS THAT CAUSE MINIMAL PROBLEMS FOR OTHER COUNTRIES. SUCH AGREEMENT ON PRINCIPLES AND PROCEDURES HAS POLITICAL IMPORTANCE AT A TIME WHEN THE INTERNATIONAL ECONOMIC SYSTEM IS UNDER PRESSURE.

B. NOVEMBER XCSS MEETING WILL TAKE UP THREE MAJOR ASPECTS OF OECD WORK ON INTERNATIONAL INVESTMENT AND ACTIVITIES OF MNE'S. AS INDICATED IN REF C, THEY ARE: (1) GUIDELINES ON INCENTIVES/DISINCENTIVES AND NATIONAL TREATMENT; (B) FUTURE WORK OF INVESTMENT EXPERTS GROUP ON INTERNATIONAL INVESTMENT AND ACTIVITIESOF MNE'S; AND (3) PROPOSED OECD INVESTMENT COMMITTEE.

C. GUIDELINES ON INCENTIVES/DISINCENTIVES AND NATIONAL TREATMENT: USG BELIEVES INVESTMENT EXPERTS NEED FRESH MANDATE TO ADVANCE WORK. WHILE NUMBER OF TECHNICAL AND DRAFTING PROBLEMS WILL REMAIN, WE THINK SUBSTANTIAL PROGRESS CAN BE MADE AT EXPERT LEVEL, IF DECISION CAN BE REACHED AT XCSS LEVELON KEY ELEMENT OF NATIONAL TREATMENT, I.E.RECONCILIATION OF DIFFERENT APPROACHES EXPRESSED IN PARAGRAPHS 1 AND 8, REF. C., ANNEX II. DRAFT LANGUAGE THESE PARAS IS AS FOLLOWS:

"1.A. THE PARTICIPATING MEMBER COUNTRIES SHALL TO THE EXTENT NECESSARY FOR EFFECTIVE ECONOMIC CO-OPERATION ENDEAVOR TO ACCORD TO ENTERPRISES UNDER FOREIGN CONTROL LIMITED OFFICIAL USE

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LEGALLY OPERATING ON THEIR TERRITORY TREATMENT WHICH SHALL BE AS FAVOURABLE AS THAT ACCORDED TO NATIONAL ENTERPRISES."

"1.B. THE PARTICIPATING MEMBER COUNTRIES SHALL ACCORD TO ENTERPRISES UNDER FOREIGN CONTROL LEGALLY OPERATING ON THEIR TERRITORY TREATMENT WHICH SHALL BE AS FAVOURABLE AS THAT ACCORDED TO NATIONAL ENTERPRISES."

"8.A. EXCEPTIONS MAY BE FREELY ALTERED BY MEMBER COUNTRIES."

"8.B. EXCEPTIONS INTRODUCED AFTER ENTRY INTO FORCE OF THE PRESENT INSTRUMENT MUST BE JUSTIFIED BY THE EXISTENCE OF SERIOUS INJURY TO THE NATIONAL ECONOMY CAUSED BY THE EXERCISE BY ENTERPRISES UNDER FOREIGN CONTROL OF RECOGNISED RIGHTS AND ACTIVITIES. JUSTIFICATION MUST BE PROVIDED AT THE SAME TIME AS NOTIFICATION IS GIVEN OF THE NEW SPECIAL EXCEPTIONS."

D. LANGUAGE QUOTED PARA C ABOVE POSES ALTERNATIVES RANGING FROM LARGELY HORTATORY APPROACH TO NATIONAL TREATMENT (1A AND 8A) TO STRONG OBLIGATION (1B AND 8B) OR POSSIBILITIES RANGING FROM STRICT APPROACH TO NATIONAL TREATMENT WITH EASE OF EXCEPTIONS (1B AND 8A) TO RELAXED APPROACH TO NATIONAL TREATMENT AND RIGID APPLICATION (1A AND 8B). WE HOPE THAT DELEGATIONS WILL GO TO XCSS WITH DESIRE TO REACH AN ACCORD ON LANGUAGE FOR PARAS 1 AND 8, EITHER THROUGH CONSIDERATION OF FOREGOING ALTERNATIVES OR THROUGH NEW LANGUAGE. GIVEN THE INABILITY OF EXPERTS THUS FAR TO REACH AGREEMENT, WE HOPE EFFORT WILL BE MADE TO FIND ACCEPTABLE MIDDLE GROUND. FOR EXAMPLE, WE THINK COMPROMISE MIGHT BE REACHED WHICH WOULD LINK ACCEPTANCE OF PARA 1B TO NEW LANGUAGE FOR PARA 8 ALONG FOLLOWING LINES: "EXCEPTIONS MAY BE INSTITUTED ONLY AFTER PRIOR CONSULTATION WITHIN THE OECD FRAMEWORK WHICH HAS ESTABLISHED JUSTIFIABLE GROUNDS". THIS LANGUAGE WOULD PROVIDE A VERY GENERAL CRITERION FOR EXCEPTION, SUBJECT ONLY TO THE PRIOR CONSULTATION PROCEDURES WHICH WOULD INSURE THAT THE PURPOSE OF THE EXERCISE (MINIMIZING DAMAGE TO OTHER FOREIGN COUNTRIES CAUSED BY ACTIONS IN LIMITED OFFICIAL USE

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THE PURSUIT OF NATIONAL OBJECTIVES) IS ACCOMPLISHED. SUCH A BROADENED EXCEPTION PROCEDURE SHOULD ALSO MAKE IT EASIER FOR GOVERNMENTS TO ACCEPT THE MORE SPECIFIC LANGUAGE OF PARAGRAPH 1B.

E. NEW MANDATE FOR INVESTMENT EXPERTS GROUP:
ANCILLARY ISSUE RAISED BY REF C IS NEED TO GIVE NEW INSTRUCTIONS TO INVESTMENT EXPERTS GROUP. WE BELIEVE EXPERTS GROUP SHOULD BE GIVEN FRESH MANDATE TO STRIVE FOR RAPID COMPLETION OF WORK IN INVESTMENT FIELD. WE ALSO BELIEVE THAT THE WORK ON MNES MUST BE GIVEN VIGOROUS IMPETUS. (FYI. SOME DELS, NOTABLY FRANCE, ITALY, AUSTRALIA, CANADA, AND THE EC COMMISSION BELIEVE THAT WORK ON GUIDELINES - INCENTIVES/DISINCENTIVES AND NATIONAL TREATMENT - SHOULD NOT BE COMPLETED UNTIL WORK IS ALSO

FINISHED ON MNE EXERCISE WHICH IS NOW AT STAGE OF STUDY IN VARIOUS COMMITTEES. US - SUPPORTED BY SWITZERLAND, UK, NETHERLANDS, AND GERMANY - BELIEVES EACH PHASE OF PROGRAM SHOULD GO FORWARD AS RAPIDLY AS POSSIBLE, EACH AT ITS OWN PACE. END FYI). IN SPEAKING TO HOST GOVERNMENT OFFICIALS, YOU MAY NOTE THAT USG WISHES TO ACCELERATE WORK PROGRAM ON MNE'S TO EXTENT POSSIBLE.

F. PROPOSAL ON NEW OECD INVESTMENT COMMITTEE: THIRD ISSUE IS SECRETARIAT PROPOSAL THAT A PERMANENT HIGH-LEVEL INVESTMENT COMMITTEE TO CARRY ON THE INVESTMENT/MNE EXERCISE

AND PERHAPS CONSIDER OTHER INVESTMENT PROBLEMS, BE CREATED. WHILE WE SEE CONSIDERABLE MERIT IN THE ESTABLISHMENT OF A PERMANENT OECD FORUM FOR CONSULTATIONS ON INVESTMENT ISSUES, WE BELIEVE THAT THERE ARE A NUMBER OF IMPORTANT DETAILS TO BE WORKED OUT BEFORE OECD WILL BE IN POSITION TO REACH AGREEMENT ON NEW COMMITTEE. SOME OF THESE DETAILS ARE: RELATIONSHIP OF NEW COMMITTEE TO COUNCIL AND TO OTHER OECD COMMITTEES CURRENTLY DEALING WITH INTERNATIONAL INVESTMENT AND ACTIVITIES OF MNE'S, COMPOSITION OF PROPOSED COMMITTEE AND ITS TERMS OF REFERENCE, AND COMMITTEE PROCEDURES. ONE POSSIBILITY MIGHT BE FOR THE XCSS TO ASK SECRETARY GENERAL TO ESTABLISH SMALL DRAFTING GROUP, DRAWING ON THE LIMITED OFFICIAL USE

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INVESTMENT EXPERTS GROUP AS HE SEES FIT, TO PREPARE A REPORT ON THE PROPOSED INVESTMENT COMMITTEE FOR THE COUNCIL AND OECD MEMBER GOVERNMENTS.

G. THUS, WE WOULD SEE INVESTMENT EXPERTS GROUP HAVING TWO FUNCTIONS FOR NEAR TERM, NAMELY (1) CONTINUING ITS WORK ON INVESTMENT AND ACTIVITIES OF MNE'S (2) PROVIDING MANPOWER POOL TO ASSIST SECRETARY GENERAL IN PREPARING REPORT ON NEW INVESTMENT COMMITTEE.

3. ACTION POSTS SHOULD REPORT AS SOON AS POSSIBLE ON HOST GOVERNMENT RESPONSES TO ABOVE AND PROVIDE THEIR OWN ASSESSMENT OF ATTITUDE OF THEIR HOST COUNTRY. (E.G. WE UNDERSTAND THAT CANADA MAY BE RELUCTANT TO ADOPT ANY GUIDELINES.)

4. INFO POSTS MAY DRAW ON THE FOREGOING AT THEIR DISCRETION (WITHOUT REFERENCE TO RESTRICTED MEETING), AND ANY REPORTS OR COMMENTS WILL BE APPRECIATED.

5. FOR OECD MISSION: YOU MAY DRAW ON FOREGOING IN DISCUSSIONS WITH SECRETARIAT AND APPROPRIATE DELEGATIONS. PLEASE POUCH COPIES OF REF C TO ALL ADDRESSEES IN EVENT

YOU HAVE NOT ALREADY DONE SO.

6. FOR BERN: YOU MAY DRAW ON FOREGOING FOR RESPONSE
TO JOLLES AND MAY INFORM HIM OF APPROACHES WE ARE
MAKING. WE WOULD OF COURSE WELCOME HIS SUPPORT,
ESPECIALLY ON NATIONAL TREATMENT ISSUE. WHILE HE IS

NATURALLY BEST JUDGE OF WHETHER TO MAKE BILATERAL
APPROACHES, WE WOULD BE RELUCTANT TO ASK HIM TO DO SO,
SINCE WE WOULD NOT WANT TO HAVE HIM JEOPARDIZE THE
OBJECTIVITY OF HIS POSITION AS CHAIRMAN. WE WOULD IN ANY
CASE WELCOME HIS VIEWS ON FOREGOING. INGERSOLL UNQUOTE
KISSINGER

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